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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Public Notice

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Common Carrier Bureau Seeks Comment On  
North American Numbering Council Letter Seeking  
Clarification of the Term "Technology Neutral"

DA 97-2234

CC 92-237

COMMENTS OF THE PERSONAL  
COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"),<sup>1</sup> by its attorneys, hereby submits its comments on the Commission's *Public Notice* in the above-captioned proceeding.<sup>2</sup> As described below, the Commission should define "technology neutral" in a manner that provides wireless carriers with the same, nondiscriminatory access to numbering resources as wireline carriers.

<sup>1</sup> PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

<sup>2</sup> FCC *Public Notice*, "Common Carrier Bureau Seeks Comment On North American Numbering Council Letter Seeking Clarification of the Term 'Technology Neutral,'" DA 97-2234 (Oct. 20, 1997) ("*Public Notice*").

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**I. THE COMMISSION SHOULD DEFINE "TECHNOLOGY NEUTRAL" TO AVOID BOTH DIRECT AND INDIRECT DISCRIMINATION AGAINST WIRELESS SERVICE PROVIDERS**

As a matter of background, telephone numbers are one of the essential "raw materials" of the telecommunications industry, without which no carrier can remain in business. As such, full and fair access to numbering resources is vital to the economic viability of wireless service providers, which are often competing against incumbent wireline providers that already have a large and well-established customer base. Without non-discriminatory, "technology neutral" access to telephone numbers, wireless carriers will be placed at a competitive disadvantage in contracting with new subscribers and servicing the needs of existing subscribers, and will quickly feel the economic effects of the substandard customer service that results from inadequate access to numbering resources.

Recognizing these competitive and economic considerations,<sup>3</sup> both Congress and the Commission have acknowledged the need to ensure equitable, "technology neutral" access to telephone numbers. Congress, in adding Section 251(e)(1) to the Communications Act of 1934, as amended ("Communications Act"), granted the Commission "exclusive jurisdiction" over numbering resources within the United States, and required the Commission to distribute these numbering resources "on an equitable basis."<sup>4</sup>

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<sup>3</sup> See *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, 10 FCC Rcd 4596, ¶ 19 (1995) ("*Ameritech Order*") ("Unavailability of numbers, or an unreasonable allocation of available numbers, could prevent or discourage consumers from taking new services").

<sup>4</sup> 47 U.S.C. § 251(e).

The Commission, in issuing its *Ameritech Order*, stated its belief that “a successful administration of the NANP [North American Numbering Plan] will not unduly favor or disadvantage any particular industry segment or group of consumers” nor “unduly favor one technology over another.”<sup>5</sup> Because it was issued prior to the passage of Section 251(e), the *Ameritech Order* was premised on the Commission’s Section 201(b) and 202(a) authority, which require carriers’ practices and services to be “just and reasonable” and prohibit carriers from engaging in “unreasonable discrimination” in the provision of services.<sup>6</sup> In implementing Section 251(e)(1) in its *Local Competition Second Report and Order*, the Commission affirmed its *Ameritech Order*, stating that the guidelines set forth in the *Ameritech Order* “are consistent with Congress’ intent to encourage vigorous competition in the telecommunications marketplace.”<sup>7</sup>

With these principles in mind, the Commission should define “technology neutral” in a manner that prevents both direct and indirect discrimination against wireless service providers in the allocation of numbering resources. Directly discriminatory Numbering Plan Area (“NPA”) relief plans are those that on their face subject wireless and wireline carriers to differing treatment. As described in the *Local Competition Second Report and Order* and the *Ameritech Order* such directly discriminatory practices include: (1) the implementation of “any overlay that would segregate only particular types of telecommunications services or *particular types of*

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<sup>5</sup> *Ameritech Order*, 10 FCC Rcd 4596, ¶ 18.

<sup>6</sup> 47 U.S.C. §§ 201(b), 202(a).

<sup>7</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (Second Report and Order and Memorandum Opinion and Order), 11 FCC Rcd 19392, ¶ 281 (1996) (“*Local Competition Second Report and Order*”).

*telecommunications technologies* in discrete area codes;<sup>8</sup> and (2) requiring only wireless carriers — and not wireline carriers — to take back numbers from their subscribers.<sup>9</sup>

Further, in order to ensure that no discrimination against wireless technologies occurs when an “all services” overlay is implemented, PCIA endorses the safeguards set forth the *Local Competition Second Report and Order*. Specifically, when an all services overlay is implemented, the Commission requires: (1) mandatory 10-digit local dialing by all customers between and within the area codes on which the new code is overlaid; and (2) availability to every existing telecommunications carrier — including wireless carriers — authorized to provide service in the affected NPA, of at least one NXX code in the existing NPA.<sup>10</sup>

Indirect discrimination, on the other hand, occurs when a relief plan does not facially subject wireless and wireline carriers to differing treatment, but when the plan, as implemented, provides wireless providers with inferior access to numbering resources. Examples of indirectly discriminatory plans include the implementation of: (1) number pooling under an NXX-X Location Routing Number (“LRN”) scheme; and (2) unassigned number porting.<sup>11</sup>

Both of these relief plans require number portability and therefore limit carrier participation to those providers that have implemented or can implement this feature. In order to

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<sup>8</sup> *Id.*, ¶ 285 (emphasis added). See also *id.*, ¶ 304 (stating that the “Texas Commission’s wireless-only overlay violates our *Ameritech Order* on its face” and is inconsistent with the *Local Competition Second Report and Order*).

<sup>9</sup> *Ameritech Order*, 10 FCC Rcd 4596, ¶ 21.

<sup>10</sup> *Local Competition Second Report and Order*, 11 FCC Rcd 19392, ¶ 285.

<sup>11</sup> See Letter from Alan C. Hasselwander, Chairman, NANC to Regina M. Keeney, Chief, Common Carrier Bureau (Aug. 22, 1997).

allow various technical obstacles to be identified and remedied, however, the FCC has promulgated a deployment schedule for wireless number portability that is significantly different than the schedule for wireline number portability.<sup>12</sup> Thus, these number pooling and transparent overlay plans require number portability well before the Commission's stated deadline for wireless implementation. As such, wireless providers are being penalized for not meeting a deadline that has not yet expired — hardly a "technology neutral" relief plan.<sup>13</sup>

Further, the Commission must ensure that whatever relief plans it sanctions contain administrative safeguards to assure that *as actually implemented*, the plans provide wireless carriers with the same access to numbers as wireline carriers. For example, the Pennsylvania relief plan hypothesizes that wireline carriers using transparent overlay numbers will free up large blocks of numbers, which will then be available to wireless carriers. There are, however, no mechanisms in place to ensure that this actually transpires. As stated in a Joint Letter to the Common Carrier Bureau, "no guidelines or other administrative procedures [are] in place to

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<sup>12</sup> The Commission has exempted paging providers from number portability obligations because paging networks are not capable of providing number portability, and the costs of upgrading these networks would outweigh the benefits that would be derived. *Telephone Number Portability*, 11 FCC Rcd 8352, ¶ 156, n.451 (1996), *affirmed on recon.*, 12 FCC Rcd 7236 (1997). Broadband CMRS providers were generally given until June 30, 1999 to implement number portability because "[w]hile the wireline industry has already developed many of the standards and protocols necessary ... to provide number portability, the CMRS industry is only beginning to address the additional standards and protocols specific to the provision of portability by CMRS carriers." *Id.*, ¶¶ 164, 166.

<sup>13</sup> See Letter from Mark J. Golden, Vice-President, PCIA, to Regina M. Keeney, Chief, Common Carrier Bureau (Aug. 22, 1997) (expressing concern that the number pooling portion of Pennsylvania's "transparent overlay" plan will be instituted before the implementation of wireless number portability).

support assignment of resources where some carriers are subject to one relief measure ... and other carriers to another."<sup>14</sup>

If wireless carriers continue to face jeopardy type assignment processes while carriers with resort to pooling have unfettered access to numbers, wireless carriers are being indirectly discriminated against. As such, these relief plans are not "technology neutral."

In sum, directly discriminatory relief plans should be flatly prohibited by the Commission. If, however, a short period of indirect discrimination is unavoidable, wireless carriers must, at a minimum, have access to adequate numbering resources on a nondiscriminatory basis during this period of time. Without such access to telephone numbers — even for a short period of time — wireless carriers will be unable to engage in fair competition with wireline carriers.

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<sup>14</sup> Letter from PCIA, Sprint Spectrum, L.P., Nextel Communications, and Omnipoint to Richard Metzger, Chief, Common Carrier Bureau 2 (Sept. 16, 1997) ("Joint Letter") (requesting that the three NPA codes requested for Pennsylvania's "transparent overlay" plan not be released because the plan discriminates against wireless providers).

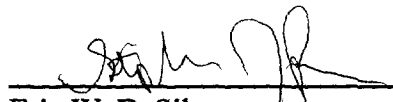
## II. CONCLUSION

The Commission should define "technology neutral" in a manner that prohibits both direct and indirect discrimination against wireless service providers in the assignment of numbering resources. Such a definition will, consistent with the Commission's policies, encourage full and fair competition between wireless and wireline telecommunications carriers.

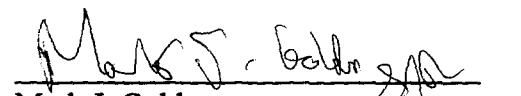
Respectfully submitted,

### PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

By:

  
Eric W. DeSilva  
Stephen J. Rosen  
WILEY, REIN & FIELDING  
1776 K Street, NW  
Washington, DC 20006  
(202) 429-7000

By:

  
Mark J. Golden,  
Senior Vice President, Industry Affairs  
Mary E. Madigan,  
Vice President, External Affairs  
PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314-1561  
(703) 739-0300

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